

STATEMENT OF PURPOSE

RS18759C3

This bill modifies deed of trust foreclosure law to provide similar protection to guarantors of obligations secured by deeds of trust as is given to borrowers. In 1988, the Idaho Supreme Court ruled in the case of *First Security Bank of Idaho v. Gaige*, 115 Idaho 172 (1988), that Idaho law does not provide guarantors the same protections as borrowers under Idaho's foreclosure laws, and that the issue was best left for the legislature to decide.

The present economic turmoil has brought emphasis to this issue as some lenders seek judgments against guarantors for payment of loans without first resorting to the property pledged as security for the loan. As lenders go for the cash instead of the property, working capital of guarantors is impaired, causing a domino effect of failure in other projects, and a race to sue guarantors first instead of resorting to the security first.

Section 45-1503, Idaho Code, relating to foreclosure of deeds of trust is amended to include guarantors within the protections of the statute and to apply a single action rule. The amendment also provides that if the lender claims the property is substantially valueless, the lender may bypass a foreclosure sale and proceed to sue upon the debt in lieu of resorting to the security. Section 45-1508, Idaho Code, includes guarantors within the protections of the deed of trust deficiency judgment law by requiring a single action; however, guarantors are still obligated for the total amount of their guarantee exceeding the value of the real property security. Credit for default insurance paid for by the obligor or guarantor is given against any deficiency. Contractual waiver of the statutory protections is prohibited.

FISCAL NOTE

There should be no impact to the general fund.

Contact:

Name: Representative Lynn M. Luker

Office:

Phone: (208) 332-1000